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Health And Welfare Trust Fund for Northern California, et al.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA; DAN REDING and JAMES E.
MURRAY, Trustees;

PENSION TRUST FUND FOR OPERATING
ENGINEERS; DAN REDING and JAMES E.
MURRAY, Trustees;

PENSIONED OPERATING ENGINEERS'
HEALTH AND WELFARE TRUST FUND; DAN
REDING and JAMES E. MURRAY, Trustees; and

OPERATING ENGINEERS AND PARTICIPATING
EMPLOYERS PRE-APPRENTICE, APPRENTICE
AND JOURNEYMEN AFFIRMATIVE ACTION
TRAINING FUND; DAN REDING and JAMES E.
MURRAY, Trustees;

OPERATING ENGINEERS LOCAL UNION NO. 3
VACATION, HOLIDAY AND SICK PAY TRUST
FUND; DAN REDING and JAMES E. MURRAY,
Trustees,

Plaintiffs,

v.

A BETTER VALLEY CRANE, "LLC", a California
Limited Liability Company; KIM BALIEL, an
individual; TIM BALIEL, an individual

Defendants.

Case No.

COMPLAINT

Parties

1. The Operating Engineers' Health and Welfare Trust Fund for Northern California ("Health Fund"); Pension Trust Fund for Operating Engineers (which includes the Pension Plan for the Pension Trust Fund for Operating Engineers, and the Operating Engineers Annuity Plan) ("Pension Fund"); Pensioned Operating Engineers' Health and Welfare Trust Fund ("Pensioned Health Fund"); Operating Engineers and Participating Employers Pre-apprentice, Apprentice and Journeymen Affirmative Action Training Fund ("Affirmative Action Training Fund"); and the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund ("Vacation Fund") are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3), and are multi-employer plans as defined by ERISA § 3(37)(A), 29 U.S.C. § 1002(37)(A). Dan Reding and James E. Murray are Co-Chairmen of the Joint Boards of Trustees of the Health Fund, Pension Fund, Pensioned Health Fund, Affirmative Action Training Fund, and Vacation Fund, and have authority to act on behalf of all Trustees of those Funds. The Funds and their fiduciaries are together referred to herein as "ERISA Plaintiffs" or "Plaintiffs."

2. A Better Valley Crane, "LLC," a California Limited Liability Company, Kim Baliel and Tim Baliel ("Defendants"), are employers by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2), 29 U.S.C. § 152(2).

Jurisdiction

3. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

4. Jurisdiction exists in this Court over all the claims by virtue of Labor Management Relations Act ("LMRA") § 301, 29 U.S.C. § 185, in that ERISA Plaintiffs seek to enforce the terms and conditions of a valid collective bargaining agreement between Defendants and the Union.

5. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that

1 they arise out of a common nucleus of operative facts that form the basis of the federal claims asserted
2 herein, each of which has a substantial ground in federal jurisdiction.

3 Venue

4 6. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an action
5 is brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs'
6 discretion, in the district where the plan is administered, where the breach took place, or where a
7 defendant resides or may be found, and process may be served in any other district where a defendant
8 resides or may be found. ERISA Plaintiffs' Trust Funds are administered in this district at their principal
9 place of business in Alameda, California. Thus, jurisdiction and venue are properly grounded with this
10 Court.

11 7. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29 U.S.C. §
12 185, as this Court has jurisdiction over the parties, as the Operating Engineers Local Union No. 3 of the
13 International Union of Operating Engineers, AFL-CIO ("Union") maintains its principal place of
14 business in this district, its duly authorized officers or agents are engaged in representing employee
15 members in this district, and the claims arise in this district.

16 Intradistrict Assignment

17 8. The basis for assignment of this action to this Court's Oakland Division is that all of the
18 events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda, where ERISA
19 Plaintiffs' Funds and the Bargained Entities are administered, and where Defendants therefore failed to
20 fulfill its statutory and contractual obligations to Plaintiffs.

21 Bargaining Agreements

22 9. Defendants Kim Baniel and Tim Baniel, on behalf of Defendant A Better Valley Crane,
23 "LLC" entered into the Independent Equipment Rental Agreement (the "Independent Agreement") with
24 the Union, which incorporates the current Master Agreement for Equipment Rental ("Master
25 Agreement") between the Union and the Crane Owners Association, Inc. requiring employer
26 contributions to Plaintiffs' Funds, to the Union for union dues, and to the Bargained Entities more fully
27 described in the Master Agreement. Under the Independent Agreement, the principal shareholder(s) of
28

1 Defendant A Better Valley Crane, "LLC" personally guaranteed all amounts claimed herein. Plaintiffs
2 are informed and believe, and therefore allege that Defendants Kim Baliel and Tim Baliel are the
3 principal shareholders of Defendant A Better Valley Crane, "LLC." The Independent Agreement and
4 Master Agreement are collectively referred to hereinafter as the "Bargaining Agreements." The
5 Bargaining Agreements, which incorporate the terms of the Trust Agreements establishing the Trust
6 Fund ("Trust Agreements") require Defendants to provide employer contributions to Plaintiffs' Funds,
7 to the Union for union dues, and to the Bargained Entities more fully described in the Bargaining
8 Agreements. ERISA Plaintiffs are third party beneficiaries of the Bargaining Agreements.

9 10. Under the terms of the Bargaining Agreements, and Trust Agreements incorporated
10 therein, Defendants are required to pay certain contributions to the Operating Engineers' Vacation,
11 Holiday & Sick Pay Trust Fund, Contract Administration Fund; Job Placement Center and Market Area
12 Committee Administration Market Preservation Fund; Operating Engineers Industry Stabilization Trust
13 Fund; Basic Crafts Workers Compensation Trust Fund; and Business Development Trust Fund
14 (including the California Alliance for Jobs (together referred to herein as "Bargained Entities") and dues
15 to the Union. Plaintiffs' Boards of Trustees have been authorized to collect and distribute monies due
16 to the Bargained Entities as well as dues due to the Union under the Bargaining Agreements and Trust
17 Agreements.

18 11. Under the Bargaining Agreement and Trust Agreements, which are incorporated into the
19 Bargaining Agreement and made binding on Defendants, Defendants are required to regularly pay to
20 ERISA Plaintiffs, the Bargained Entities, and the Union, certain sums of money, the amounts of which
21 are determined by the hours worked by Defendants' employees. Contributions are due on the fifteenth
22 (15th) day of the month following the month in which hours were worked, and are considered delinquent
23 if not received by the twenty-fifth (25th) day of that month. Defendants are also required, pursuant to
24 the Bargaining and Trust Agreements, to pay liquidated damages in the amount of ten percent (10%)
25 for each delinquent contribution, but in the amount of twenty percent (20%) for each delinquent
26 contribution which is the subject of litigation. Moreover, the Bargaining and Trust Agreements provide
27 that interest accrues on delinquent contributions at the rates reasonably set by the Trustees from the date
28

1 they become delinquent, which is the twenty-sixth (26th) day of the month in which payment was due,
2 until paid in full.

3 12. The Bargaining and Trust Agreements further require Defendants to maintain time
4 records or time cards, and to permit an authorized Trust Fund representative to examine such records
5 of Defendants as are necessary to determine whether Defendants have made full payment of all sums
6 owed to ERISA Plaintiffs. Should an audit of Defendants' records reveal Defendants have failed to
7 provide full and prompt payment of all sums due to Plaintiffs, Defendants must reimburse Plaintiffs for
8 the amounts due, including audit fees, in addition to any other obligations pursuant to the Bargaining
9 and Trust Agreements.

10 Factual Allegations

11 13. Defendants have failed and refused to pay amounts found due to Plaintiffs as a result of
12 an audit of Defendants' payroll records for the period from January 1, 2016 through December 31, 2019.
13 Liquidated damages and interest have been incurred and are owed to Plaintiffs for the unpaid
14 contributions for that period.

15 14. Defendants have also failed and refused to report and pay contributions for hours worked
16 by Defendants' employees during the months of November 2017 through August 2021. Liquidated
17 damages and interest have been incurred and are owed to Plaintiffs for the unreported and unpaid
18 contributions for these months.

19 15. Plaintiffs are also entitled to recover any and all other contributions, and all liquidated
20 damages and interest on delinquent contributions not specified above, found due on timecards, audit, or
21 otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs,
22 through the time of Judgment. Plaintiffs reserve the right to conduct a further audit to determine whether
23 there are any additional amounts due from Defendants.

24 **FIRST CAUSE OF ACTION** 25 **For Audit Payment, Payment of Delinquent Contributions, Interest, Liquidated Damages,** 26 **Attorneys' Fees and Costs Against Defendants**

27 16. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 15, above.

28 17. Defendants have a contractual duty to timely report and pay the required contributions to

1 Plaintiffs and the Bargained Entities, and to timely pay dues to the Union, pursuant to the Bargaining
2 Agreement and Trust Agreements. Defendants also have a contractual duty under the Bargaining
3 Agreement, and Trust Agreements incorporated therein to permit an audit of its records to determine
4 whether it is making full and prompt payment of all sums required to be paid by it to Plaintiffs, and to
5 pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

6 18. In addition, Defendants have a statutory duty to timely make the required payments to
7 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

8 19. Defendants' failure and refusal to submit reports and pay the required contributions,
9 including the amounts found by audit, plus liquidated damages and interest thereon and on late-paid
10 contributions, was at all times, and still is, willful. Defendants continue to breach the Bargaining
11 Agreement, and incorporated Trust Agreements by failing to report and pay all amounts owed as
12 alleged. Said refusal is unjustified and done with knowledge and intent.

13 20. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and
14 irreparable injury, loss and damage unless Defendants are ordered specifically to perform all obligations
15 required on Defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29
16 U.S.C. §§ 141-197, and the Bargaining Agreement and Trust Agreements, and are restrained from
17 continuing to refuse to perform as required thereunder.

18 21. This Court is authorized to issue injunctive relief based on the traditional standard. As set
19 forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility
20 that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of
21 hardships and advancement of public interest favor ERISA Plaintiffs.

22 22. This Complaint does not in any manner relate to statutory withdrawal liability that may
23 or may not be assessed against Defendants. ERISA Plaintiffs expressly reserve the right to pursue any
24 such withdrawal liability claims against Defendants as provided by ERISA Plaintiffs' Plan Documents,
25 Trust Agreements, and the law.

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27 //

Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For a judgment against Defendants as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Entities, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

ii. To the Union in accordance with the Bargaining Agreement.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount provide*d for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all unpaid contributions at the rates set in accordance with the Bargaining Agreement, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132(g)(2)(B).

2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance with the Bargaining Agreement for all Bargained Entities; and with LMRA § 301, 29 U.S.C. § 185, for all Plaintiffs.

3. For an order,

(a) requiring that Defendants comply with its obligations to Plaintiffs under the terms of the Bargaining Agreement and the Trust Agreements;

(b) enjoining Defendants from violating the terms of those documents and of ERISA;
and

(c) enjoining Defendants from disposing of any assets until said terms have been complied with, and from continuation or operation of Defendants' business until said terms have been complied with.

4. That the Court retain jurisdiction of this case pending compliance with its orders.
5. For such other and further relief as the Court may deem just and proper.

DATED: September 21, 2021

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By:

/S/

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